

R.C.C. No.86/2025

State Government

Vs.

Abhay Shivram Gondane,

Order on below Exh.1
(Passed on 11th November, 2025)

On perusal of charge-sheet it appear that the offence alleged against the accused is under Sections 303(2), 49 of Bharatiya Nyaya Sanhita, 2023, read with Sections 47[8], 48[8] of Maharashtra Land Revenue Code, read with Sections 4, 21 of Mines and Minerals [Development and Regulation] Act, 1957 [In short "MMRD Act"] and Sections 3, 4 of Prevention of Public Property Damages Act, 1984. However, the offence under Sections 4, 21 of Mines and Minerals [Development and Regulation] Act, 1957 was also alleged against the accused.

2. However, as regarding to the offence under Sections 4, 21 of MMRD Act, as per Section 22 of MMRD Act, no Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. As this context on perusal of entire charge-sheet no any document filed by investigation officer. No any single document on record which shows that accused had violated the provisions of Mines and Minerals Act.

3. As this context, in the case of **Kanwar Pal Singh Vs. State of Uttar Pradesh and another reported in (2020) 14 SCC 331**, Hon'ble Apex Court observed that the Magistrate can take cognizance on the basis of charge-sheet only for the offence under the Indian Penal Code, but the cognizance for the offence under the Act, 1957 can be taken

only on the basis of complaint filed by authorised officer as per the provisions of Act, 1957. Paragraph 16 of this judgment is being quoted as under:- *"16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 of the IPC. and Sections 3 and 4 of the Prevention of Damage to Public Property Act.*

4. Therefore, as per ratio laid down in **Kanwar Singh Supra** Magistrate would take cognizance on the basis of charge-sheet only for the offence under the Indian Penal Code, but the cognizance for the offence under the Act, 1957 can be taken only on the basis of complaint filed by authorised officer as per the provisions of Act, 1957. Here, in the present case, though police have been alleged the offence under Sections 4, 21 of MMRD Act was also alleged against the accused but the complaint is not filed by authorised officer as per the provisions of Act, 1957. So, I am of the opinion that, prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation but as per ratio laid down in **Kanwar Singh Supra** I have taken cognizance on the basis

of charge-sheet only for the offence under the Indian Penal Code, and Sections 3 and 4 of the Prevention of Damage to Public Property Act. Therefore I pass following order.

: ORDER :

1. Charge is framed against accused no. 1 and 2 under Sections 303(2), 49 of Bharatiya Nyaya Sanhita, 2023, read with Sections 47[8], 48[8] of Maharashtra Land Revenue Code and Sections 3, 4 of Prevention of Public Property Damages Act, 1984 and the charge under Sections 4, 21 of Mines and Minerals [Development and Regulation] Act, 1957 is drop for want of cognizance.
2. Authorised officer as per provisions Mines and Minerals [Development and Regulation] Act, 1957 is liberty to filed separate complaint in respect of the offence under Sections 4, 21 of Mines and Minerals [Development and Regulation] Act, 1957 as per law.

Bhiwapur
Date : 11/11/2025.

(S. J. Lad)
Judicial Magistrate, F. C.,
Bhiwapur.